FILED
MAR 30 1998
CLERK

No. 97-463

IN THE
Supreme Court of the United States
OCTOBER TERM, 1997

TEXTRON LYCOMING RECIPROCATING ENGINE DIVISION, AVCO CORP.,
Petitioner,

v.

UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA, INTERNATIONAL UNION AND ITS LOCAL 787
Respondents.

On Writ of Certiorari to the United States Court of Appeals for the Third Circuit

---

BRIEF FOR RESPONDENTS

MARSHA S. BERZON
177 Post Street
San Francisco, CA 94104

JAMES B. COPPESS
815 16th Street, N.W.
Washington, D.C. 20006

LAURENCE GOLD
1000 Connecticut Ave., N.W.
Washington, D.C. 20036

DANIEL W. SHERRICK
(Counsel of Record)
8000 East Jefferson Ave.
Detroit, MI 48214
(313) 926-5216

STEPHEN A. YOKICH
1757 "N" Street, N.W.
Washington, D.C. 20036

WILSON - EPES PRINTING CO., INC. - 789-0096 - WASHINGTON, D.C. 20001

BEST AVAILABLE COPY

34 pp

TABLE OF CONTENTS

	Page
TABLE OF AUTHORITIES	ii
STATUTES INVOLVED	1
STATEMENT OF THE CASE	2
SUMMARY OF ARGUMENT	6
ARGUMENT	8
1. The Federal Common Law of Labor Contracts	8
2. The Sole Question Presented in this Case	10
3. The Company's Position	13
4. This Court's Interpretation of LMRA § 301	15
5. Labor Contract Declaratory Judgment Suits	18
6. *Garmon* Pre-emption and § 301 Suits	24
7. NLRB Regulation of the Bargaining Process	27
CONCLUSION	29

TABLE OF AUTHORITIES

CASES Page

Allis Chalmers v. Lueck, 471 U.S. 202 (1985) 6, 16, 17
Association of Westinghouse Employees v. Westinghouse Electric Corp., 348 U.S. 437 (1955) 16
Avco Corp. v. Local Union, 787 UAW, 459 F.2d 968 (3rd Cir. 1972) 21
B. Brooks Inc. v. Int'l Ladies Garment Wkrs. Union, 835 F.2d 1164 (6th Cir. 1987) 9
Beverly Enterprises v. District 1199C, 90 F.3d 93 (3rd Cir. 1996) 26
Black Clawson Co. v. Int'l Ass'n of Machinists Lodge 355, 313 F.2d 179 (2nd Cir. 1962) 18, 19, 24
Blessing v. Freestone, 117 S.Ct. 1353 (1997) 11
Bowen v. United States Postal Service, 459 U.S. 212 (1983) 17
Burlington No. R. Co. v. Maintenance Employees, 481 U.S. 429 (1987) 13
Chemical Workers v. Pittsburg Plate Glass Co., 404 U.S. 157 (1971) 14
Communications Workers v. Beck, 487 U.S. 735 (1988) 26
Connell Co. v. Plumbers and Pipefitters, 421 U.S. 616 (1975) 25, 26
Dowd Box v. Courtney, 368 U.S. 502 (1962) 7, 9, 19
El Paso Bldg. & Constr. Trades Council v. El Paso Chapter Assoc. General Contractors, 376 F.2d 797 (5th Cir. 1967) 19
Franchise Tax Board v. Construction Laborers Trust, 463 U.S. 1 (1983) 18, 19, 20, 23, 24
General Cable Corp., 139 NLRB 1123 (1962) 12
Groves v. Ring Screw Works, 498 U.S. 168 (1991) .. 7, 19, 22, 25
Honig v. Doe, 484 U.S. 305 (1988) 13
Hotel Employees, Local 2 v. Marriott Corp., 961 F.2d 1464 (9th Cir. 1992) 9
IBEW, Local 481 v. Signcraft, Inc., 864 F.2d 499 (7th Cir. 1988) 19
Intern. Broth. of Teamsters v. Southwest Airlines, 875 F.2d 1129 (5th Cir. 1989) 12

TABLE OF AUTHORITIES—Continued

Page

Kaiser Steel v. Mullins, 455 U.S. 72 (1982) 28
Katzenbach v. McClung, 379 U.S. 294 (1964) 28
Kozera v. Westchester-Fairfield Chapter, 909 F.2d 48 (2nd Cir. 1990) 8
Local Union 1395, International Brotherhood of Electrical Workers, 797 F.2d 1027 (D.C. Cir. 1986) 9
Mack Trucks, Inc. v. Int'l Union, UAW, 856 F.2d 579 (3rd Cir. 1988) *cert. denied*, 489 U.S. 1054 (1989) 3, 11
McNally Pittsburg, Inc. v. Int'l Iron Workers, 812 F.2d 615 (10th Cir. 1987) 19
Miller v. California Pacific Medical Center, 19 F.3d 449 (9th Cir. 1994) 12
Motor Coach Employees v. Lockridge, 403 U.S. 274 (1971) 26
NLRB v. Burns Security Services, 406 U.S. 272 (1972) 12
NLRB v. C & C Plywood, 385 U.S. 432 (1967) 14
NLRB v. Americana Healthcare Center, 782 F.2d 941 (11th Cir. 1986) 9
Operating Engineers v. Wilson, 915 F.2d 535 (9th Cir. 1990), *cert. denied*, 505 U.S. 1212 (1992) 17
Oubre v. Entergy Operations, Inc., Sup. Ct. No. 96-1291 (Jan. 26, 1998) 27
Paperworkers v. Misco, 484 U.S. 29 (1987) 9, 26
Public Service Comm. v. Wycoff, 344 U.S. 237 (1952) 20
Retail Clerks v. Lion Dry Goods, 369 U.S. 17 (1962) 14, 26
Rozay's Transfer v. Local Freight Drivers, Local 208, 850 F.2d 1321 (9th Cir. 1988), *cert. denied*, 490 U.S. 1030 (1989) 10, 19
San Diego Building Trades v. Garmon, 359 U.S. 236 (1959) 7, 24, 25
Skelly Oil Co. v. Phillips Petroleum Co., 339 U.S. 667 (1950) 20, 23
Smith v. Evening News, 371 U.S. 195 (1962) 7, 16, 17, 25, 27, 29

TABLE OF AUTHORITIES—Continued

	Page
Southern Pacific Terminal Co. v. ICC, 219 U.S. 498 (1911)	12
Steelworkers v. Rawson, 495 U.S. 362 (1990)	18
Super Tire Engineering v. McCorkle, 416 U.S. 115 (1974)	12
Teamsters Local v. Lucas Flour, 369 U.S. 95 (1962)	16, 17
Tejidos de Coamo, Inc. v. ILGWU, 22 F.2d 8 (1st Cir. 1994)	9, 18
Textile Workers v. Lincoln Mills, 353 U.S. 448 (1957)	*passim*
Warehouseman's Local 206 v. Continental Can Co., 821 F.2d 138 (9th Cir. 1987)	9
Wilton v. Seven Falls Co., 515 U.S. 277 (1995)	28
Wooddell v. International Brotherhood of Electrical Workers, 502 U.S. 93 (1991)	14, 26
Yee v. City of Escondido, 503 U.S. 519 (1992)	11

STATUTES

28 U.S.C. § 2201	15, 19
29 U.S.C. § 158(a)(5)	14
29 U.S.C. § 158(b)(3)	14
29 U.S.C. § 158(d)	14
29 U.S.C. § 185(a)	*passim*

TREATISES

Borchard, *Declaratory Judgments* (1934)	19
Calamari & Perillo, *The Law of Contracts* (3rd ed., 1987)	10
Corbin on Contracts (1952)	9, 27
Gorman, *Labor Law* (1976)	8
Restatement (Second) of Contracts (1979)	9, 10, 19, 27
Wright, Miller & Kane, Federal Practice and Procedure (2d ed. 1983)	20, 22

IN THE
Supreme Court of the United States
OCTOBER TERM, 1997

No. 97-463

TEXTRON LYCOMING RECIPROCATING ENGINE DIVISION, AVCO CORP.,
Petitioner,
v.
UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA, INTERNATIONAL UNION AND ITS LOCAL 787
Respondents.

On Writ of Certiorari to the United States Court of Appeals for the Third Circuit

BRIEF FOR RESPONDENTS

STATUTES INVOLVED

Section 301(a) of the Labor Management Relations Act, 29 U.S.C. § 185(a), provides:

> Suits for violation of contracts between an employer and a labor organization representing employees in an industry affecting commerce as defined in this chapter, or between any such labor organizations, may be brought in any district court of the United States having jurisdiction of the parties, without respect to the amount in controversy or without regard to the citizenship of the parties.

The Declaratory Judgment Act, 28 U.S.C. §§ 2201 and 2202, provides:

> Section 2201. Creation of remedy
>
> (a) In a case of actual controversy within its jurisdiction, except with respect to Federal taxes other than actions brought under section 7428 of the Internal Revenue Code of 1986, a proceeding under section 505 or 1146 of title 11, or in any civil action involving an antidumping or countervailing duty proceeding regarding a class or kind of merchandise of a free trade area country (as defined in section 516A (a)(10) of the Tariff Act of 1930, as determined by the administering authority), any court of the United States, upon the filing of an appropriate pleading, may declare the rights and other relations of any interested party seeking such declaration, whether or not further relief is or could be sought. Any such declaration shall have the force and effect of a final judgment or decree and shall be reviewable as such.
> (b) For limitations on actions brought with respect to drug patents see section 505 or 512 of the Federal Food, Drug and Cosmetic Act.
>
> Section 2202. Further relief
>
> Further necessary or proper relief based on a declaratory judgment or decree may be granted, after reasonable notice and hearing, against any adverse party whose rights have been determined by such judgment.

STATEMENT OF THE CASE

1. The Petitioner, Textron Lycoming, Reciprocating Engine Division, AVCO Corporation (hereinafter "Textron") makes parts for and assembles aircraft engines. The Respondents, the International Union, United Automobile, Aerospace and Agricultural Implement Workers of America and its Local 787 (hereinafter "the UAW" or "the Union") and their members have collectively bargained with Petitioner for several decades at Textron's plant in Williamsport, Pennsylvania.

Prior to negotiations for the 1994-97 contract, the UAW asked Textron whether it had plans to subcontract or otherwise transfer work currently performed by UAW members in the next three years. (Jt. App. 17). The Union also asked Textron for any written materials which it had prepared on this issue. (*Id.*) When the parties met at the first bargaining session, the UAW again specifically inquired about Textron's plans to move or transfer work. (*Id.*). In response, the Vice-President for Human Resources, Frank Ratchford, said that he had no knowledge of such plans and promised to make certain that his knowledge was correct. (Jt. App. 19-20).

During the bargaining, Textron formulated and completed a secret plan to subcontract the parts production work at the plant. (Jt. App. 18). Despite Ratchford's statement that he did not know of plans to subcontract work, and that he would ensure the truth of his representation, Ratchford did not inform the Union either that these plans were being developed or that the plans had been completed during negotiations. Nor did Textron respond to the Union's request to provide Company documents which it had concerning its plans regarding the transfer of work out of the bargaining unit. (Jt. App. 18).[1]

It was against this background that the UAW and Textron concluded collective bargaining negotiations in March 1994, without the Union raising any subcontracting issues, and signed an agreement containing, *inter alia*, a no-strike clause, which was ratified by the Union's membership at the beginning of April, 1994. (Jt. App. 18).

---

[1] Textron did state in December 1993, prior to Ratchford's statement in January, that "in the years ahead" it would examine the manufacturing process to determine whether it should "make or buy" various parts. (Pet. Br. at 4, n.2; "NLRB Documents", Tab C at 9, filed by Textron on January 12, 1998). At the time Textron made that statement, it was already formulating a plan to subcontract the production of *all parts*, a plan implemented within weeks of signing the collective bargaining agreement.

After the Union ratified the contract, the plan to subcontract parts production was formally presented to and approved by Textron's Board of Directors. (Jt. App. 18). It was announced to the UAW membership on June 2, 1994. Full implementation of this plan will cost half of the Union's membership their jobs. (*Id.*)

As result of its reasonable reliance on Textron's misrepresentations and concealments, the UAW did not seek to bargain over the subcontracting of bargaining unit work during the 1994 collective bargaining negotiations, making no contract demands on the issue. (Jt. App. 18).[2] Instead, the UAW and its members agreed to a labor contract—including a promise not to engage in a strike during the term of the contract.

2. The Complaint sought a declaration that the collective bargaining agreement was voidable because Textron made fraudulent misrepresentations during the negotiation of the collective bargaining agreement. In addition to declaratory relief, the Complaint sought damages to compensate the Union and its members and to deter similar misconduct by others. (Jt. App. 19). The UAW sued under § 301 of the Labor Management Relations Act, 29 U.S.C. § 185, relying on the Third Circuit's prior decision in *Mack Trucks, Inc. v. Intern, Union, UAW*, 856 F.2d 579 (3rd Cir. 1988), *cert. denied*, 489 U.S. 1054 (1989).

Textron moved to dismiss for lack of subject matter jurisdiction. The Company argued that LMRA § 301 does not grant the federal courts jurisdiction unless the plaintiff alleges "a violation of" the collective bar-

[2] While it is impossible to state for certain what would have happened had Textron disclosed its plans, the Union would have made demands to protect the wages and incomes of its members subject to layoff. (Jt. App. 19) And, the Union may well have achieved some of its goals in this respect because it would have had the power to threaten to strike in support of its demands before it agreed to a labor contract with a "no-strike" clause.

gaining agreement, and that the UAW's only remedy for the conduct complained of was before the National Labor Relations Board. Holding that the UAW's claims were "independent of the terms of the contract," the District Court dismissed the case because the "remedy to render the contract voidable" did not alter "the fundamental nature of the suit as one based upon bad faith." (Pet. App. 17a-18a).

The Court of Appeals overturned the decision of the District Court. First, relying on the well established principle that traditional pre-emption doctrines will not foreclose federal court review of issues properly raised under § 301, the Court rejected Textron's argument that this matter was within the exclusive jurisdiction of the NLRB. Next, relying on its holding in *Mack Trucks*, the Court of Appeals held that § 301 grants federal jurisdiction over cases containing issues of contract formation including jurisdiction to provide the remedy of declaratory relief over contract formation issues since the resolution of the kind of fraud claim raised in this case was "integral to the question of whether the agreement is enforceable." (Pet. App. 12a).

Having thus disposed of the jurisdictional issue raised by Textron, the Third Circuit remanded the case for further proceedings in order to determine whether, in fact, the contract was the product of fraudulent misrepresentations and, if so, what remedy would be appropriate.[3] The

[3] The UAW has also pursued its remedies under the National Labor Relations Act. In November 1994, the UAW filed a charge alleging that Textron had failed to bargain over the decision to subcontract work and had failed to provide information after the Company announced its decision in June 1994. In October 1995, the UAW filed an amended charge based on documents obtained from the Company in June 1995, alleging that Textron had engaged in fraudulent conduct when the Company acted as if it had no plans to subcontract work at the bargaining table even as it was formu-

court also directed the trial court to consider and rule on Textron's argument that this dispute was subject to the grievance and arbitration procedure in the contract.

SUMMARY OF ARGUMENT

Since the decision in *Textile Workers v. Lincoln Mills*, 353 U.S. 448 (1957), this Court has "understood" § 301 of the Labor Management Relations Act, 29 U.S.C. § 185, as a "congressional mandate to the federal courts to fashion a body of federal common law to be used to address disputes arising out of labor contracts." *Allis Chalmers v. Lueck*, 471 U.S. 202, 209 (1985). In developing a uniform body of federal labor contract law, the courts must frequently examine issue which bear upon the formation and existence *vel non* of a contract. The question presented by the merits of the UAW's claim in this case is whether the contract at issue was induced by fraud and, as a result, can be voided by the defrauded party. The question decided by the court of appeals and presented by the *certiorari* petition is whether the federal courts have jurisdiction to consider that issue.

Textron argues that the federal courts are without authority to examine issues of contract formation absent a contract violation. Under the regime championed by Textron, a party to a putative contract would be required

---

lating and completing a plan to implement such subcontracting. ("NLRB Documents" at Tab D)

On April 30, 1996, several months after the filing of the Complaint in this case, Region Four of the NLRB issued a complaint in *Textron Lycoming*, Case No. 4-CA-23285. The case was set for trial on April 17, 1997. Two weeks before trial, Textron made an offer to NLRB Region Four to unilaterally settle the case, which the UAW has opposed. As of this date, the UAW's objections to the proposed unilateral settlement are still pending before Region Four. The unfair labor practices trial has been postponed pending the decision of the Region whether to accept the proposed settlement.

to breach that contract in order to obtain a judicial determination regarding its validity. Forcing such breaches of contract would undermine the strong federal labor policy favoring the "access to a neutral forum for the peaceful resolution of disputes," *Groves v. Ring Screw Works*, 498 U.S. 168, 173 (1990), and the Congressional determination to "leave the enforcement of collective bargaining agreements to the 'usual processes of law,'" *Dowd Box Co. v. Courtney*, 368 U.S. 502, 513 (1962), by requiring parties commit breaches of contract to ascertain their legal rights. The Declaratory Judgment Act allows for federal court lawsuits that avoid the costly—and unnecessary—impact of such contract breaches. Indeed, the entire purpose of that Act is permit access to federal courts to determine the rights of parties without requiring that one party first commit a damaging wrong. Precisely for this reason, the § 301 Congress contemplated labor contract declaratory judgment suits.

In apparent recognition of the strength of the arguments outlined above, Textron places primary reliance on an argument that federal jurisdiction here is pre-empted by application of the doctrine first announced in *San Diego Trades Council v. Garmon*, 359 U.S. 236 (1959). But Textron's argument in this regard ignores the well settled rulings that the *Garmon* doctrine is simply inapplicable to suits brought under § 301, even "where the alleged conduct of the employer . . . is an unfair labor practice within the jurisdiction of the National Labor Relations Board." *Smith v. Evening News*, 371 U.S. 195, 197 (1962).

In short, § 301 effectuates the "congressional policy of having the administration of collective bargaining contracts accomplished under a uniform body of federal substantive law," *Smith v. Evening News*, 371 U.S. at 200, which "must [be] fashion[ed] from the policy of our national labor laws." *Lincoln Mills*, 353 U.S. at 456. And, like any body of contract law, the federal common law of labor contracts—when coupled with the Declaratory

Judgment Act—plainly permits the federal courts to inquire into the validity of a putative contract without requiring that one party first commit a contract breach.

ARGUMENT

1. *The Federal Common Law of Labor Contracts.* Section 301 of the Labor Management Relations Act (LMRA) provides for "[s]uits for violation of contracts between an employer and a labor organization representing employees in an industry affecting commerce . . . ." 29 U.S.C. § 185(a). When a union or employer brings suit under this provision alleging that the other party to a collective bargaining agreement has violated the agreement, such a suit proceeds under the federal common law of labor contracts generated from § 301. *Textile Workers v. Lincoln Mills*, 353 U.S. 448 (1957).

The § 301 body of federal labor contract common law —like the body of contract common law generally—recognizes that to determine issues arising under a collective bargaining agreement, it is often necessary to decide whether there was a valid agreement or contract clause in the first place. Judge Oakes put the matter succinctly in *Kozera v. Westchester-Fairfield Elec. Contractors*, 909 F.2d 48, 52 (2d Cir. 1990), *cert. denied*, 498 U.S. 1084 (1991):

> It is axiomatic . . . that to determine whether a breach of agreement has occurred, a court must necessarily determine whether a valid agreement exists in the first place. Ancillary to determining the merits of an action for breach of a collective bargaining agreement, therefore, is the power to declare a purported agreement either invalid or binding.

The § 301 common law of labor contracts, therefore, like the common law of contracts generally, encompasses doctrines addressed to contractual validity or enforceability questions. *See* Gorman, *Labor Law* § 9, pp. 563-564 (1976) ("Existence of a Contract"). Among the con-

tract formation and validity issues routinely decided in § 301 cases are the following: whether a party's bargaining agent had authority to enter into an agreement, *Dowd Box Co. v. Courtney*, 368 U.S. 502, 504 (1962); whether there has been a meeting of minds sufficient to form a contract, *B. Brooks, Inc. v. Int'l Ladies' Garment Wkrs. Union*, 835 F.2d 1164, 1168 (6th Cir. 1987); whether there has been an offer and an acceptance sufficient to form a contract, *Warehousemen's Local 206 v. Continental Can Co.*, 821 F.2d 1348, 1350 (9th Cir. 1987); whether an agreement is no longer in force after its expiration date, *Tejidos de Coamo, Inc. v. ILGWU*, 22 F.3d 8, 15 (1st Cir. 1994); whether the agreement is unenforceably vague, *Hotel Employees, Local 2 v. Marriott Corp.*, 961 F.2d 1464, 1466-67 (9th Cir. 1992); whether there was mutual assent as to the coverage of the provision at issue, *Local Union 1395, International Brotherhood of Electrical Workers*, 797 F.2d 1027, 1036 (D.C. Cir. 1986); whether the provision at issue was omitted from the written agreement by mutual mistake, *NLRB v. Americana Healthcare Center*, 782 F.2d 941, 945 (11th Cir. 1986); whether the contract or a particular provision thereof is void for violation of public policy, *Paperworkers v. Misco*, 484 U.S. 29 (1987); and, as in this case, whether the contract is voidable because of fraud by the other party in inducing agreement. *See generally Restatement (Second) of Contracts* § 7 ("Voidable Contracts"), § 8 ("Unenforceable Contracts"), § 17 ("Requirements of a Bargain"), § 17 Comment c ("Meeting of the Minds"), § 18 ("Manifestation of Mutual Assent"), § 22 ("Mode of Assent: Offer and Acceptance"), § 151 ("When Mistake of Both Parties Makes a Contract Voidable"), § 155 ("When Mistake of Both Parties as to Written Expression Justifies Reformation"), & § 178 ("When a Term Is Unenforceable on Grounds of Public Policy") (1979); *Corbin on Contracts* (1952) § 9 ("Agreement Defined"), § 95

("Vagueness and Indefiniteness of Terms"), & § 1229 (" 'Discharge,' 'Termination' and 'Cancellation' ") (1952).

2. *The Sole Question Presented in this Case.* The issue of whether the labor contract here was voidable for fraud in the inducement was raised in a declaratory judgment action. And, as stated in the Petition for a Writ of Certiorari, the sole question decided below and presented here is the threshold question of:

> Whether Section 301 of the Labor-Management Relations Act, 29 U.S.C. § 185 . . . permits a union to sue in federal court to *declare* a collective bargaining agreement *voidable* in the absence of any alleged violation of the agreement [Pet i (emphasis supplied).][4]

[4] In addition to seeking a declaration that the labor contract was "voidable at the option of Plaintiff UAW," the complaint sought "compensatory and punitive damages . . . for the harm caused by the Defendant's misrepresentations and concealments and to deter other Employers from similar conduct." Jt. App. 19. As the complaint did not allege that the UAW had exercised its asserted option of voiding the collective bargaining agreement, the damage claim obviously does not turn on the issue of voidability, but rather rests solely on the allegation that the Company was guilty of fraud.

A fraud claim of this sort has traditionally sounded in tort, rather than contract. *See Restatement (Second) of Contracts* p. 425 ("tort law imposes liability in damages for misrepresentation, while contract law does not"). *See generally* Calamari & Perillo, *The Law of Contracts* § 9-23 373 (1987) (some states now allow both a contract action for recission and a tort action for compensatory damages). Whether or not § 301 provides jurisdiction over damage actions concerning the negotiation of collective bargaining agreements of a kind that has traditionally sounded in tort rather than contract is a substantial legal issue not decided by the court of appeals or encompassed within the question presented in the petition for certiorari. *Compare Rozay's Transfer v. Local Freight Drivers*, 850 F.2d 1321, 1334-1336 (9th Cir. 1988), *cert. denied*, 490 U.S. 1030 (1989) (holding, after substantial discussion, that § 301 permits suits for "noncontractual relief," including "tort-like, make-whole remedies").

The court of appeals did not even mention, much less address, the damage claim pled in the complaint, or any issue concerning whether

In other words, the issue raised by this case is whether, under § 301, a party to a collective bargaining agreement who believes that a putative agreement or a provision thereof is void or voidable for reasons such as those listed above can obtain a judicial declaration of the rights and legal relations resulting from the putative agreement without first violating the terms of the agreement and awaiting an enforcement action that could lead to an award of damages for breach of contract.

The court of appeals answered this question in the affirmative, relying on its holding in *Mack Trucks, Inc. v. International Union, UAW*, 856 F.2d 579, 590 (3d Cir. 1988), *cert. denied*, 489 U.S. 1054 (1989), that "§ 301(a) confers jurisdiction on a district court to determine the existence of a collective bargaining agreement." While *Mack Trucks* involved an action by an employer for a declaration that a new collective bargaining agreement was "valid and enforceable," Pet. App. 7a, the court

there is jurisdiction under § 301 to award such tort-like damages. Rather, the Court of Appeals determined only that, because there is § 301 jurisdiction to provide declaratory relief, "[t]he order of the district court dismissing the complaint for lack of subject matter jurisdiction will be reversed and the case remanded for further proceedings." Pet. App. 13a. *See id.* at 4a ("The UAW's complaint . . . sought a declaratory judgment that the collective bargaining agreement was voidable at the UAW's option because it was secured by fraud in the inducement."); *id.* at 10a (characterizing this suit as "one . . . seeking declaratory judgment that an agreement is *voidable* at the will of a party").

Because no question concerning § 301 jurisdiction to award tort-like damages for misrepresentation in the negotiation of a collective bargaining agreement was addressed by the court of appeals or fairly included within the question presented, only the question of the availability of declaratory relief regarding the voidability of a collective bargaining agreement is before this Court. *Yee v. City of Escondido*, 503 U.S. 519, 536-67 (1992); *Blessing v. Freestone*, 117 S. Ct. 1353, 1359 n.3 (1997). For that reason, Textron's arguments based upon the prayer for damages in the complaint (Pet. Br. at 34-36) are irrelevant to the issue actually before the Court in this case.

of appeals in this case could "see no reason why the rationale behind *Mack Trucks*—that by enacting § 301(a) Congress intended that the courts resolve disputes *of a contractual nature*, including disputes over the agreement's very existence—does not also apply when the party who filed suit seeks a *declaration* that the agreement is not enforceable," *id.* at 9a-10a (emphasis added).[5]

---

[5] As Textron correctly notes, the fact that the collective bargaining agreement expired on April 4, 197 does not make the issue presented by the petition for certiorari moot, because "[t]he expiration of the agreement has not eliminated the dispute between the parties." Pet. 4 n.4. *See also* Pet. Br. 4 n.3. The UAW is on strike against Textron, and the negotiations over a new collective bargaining agreement will undoubtedly be affected by resolution of whether the expired agreement was induced by fraud such that the contract was voidable, even though not actually voided during its term. *See Super Tire Engineering Co. v. McCorkle*, 416 U.S. 115, 124-125 (1974). *See also International Broth. of Teamsters v. Southwest Airlines*, 875 F.2d 1129, 1132 (5th Cir. 1989), *cert. denied*, 493 U.S. 1043 (1990) ("The special treatment due labor questions has been recognized several times by the Supreme Court.").

The issue presented by the certiorari petition is, moreover, not moot for the additional reason that this issue is "capable of repetition, yet evading review." *Southern Pacific Terminal Co. v. ICC*, 219 U.S. 498, 515 (1911). And, " 'Evading review' means evading Supreme Court review." *Miller v. California Pacific Medical Center*, 19 F.3d 449, 453 (9th Cir. 1994).

The UAW is party to some 2,200 collective bargaining agreements, 15 of which are with Textron. Like the agreement in this case, the vast majority of these agreements are for a three year term. *See General Cable Corp.*, 139 NLRB 1123, 1127 (1962) (adopting a rule allowing contracts to bar representation elections for no more than three years, based in large part on the great number of three year collective bargaining agreements). *See also NLRB v. Burns Security Services*, 406 U.S. 272, 290 n.12 (1972).

By definition, a claim that a contract is voidable because it was induced by fraud can arise only after the contract has been entered; indeed, the fact that Textron had made misrepresentations during bargaining only came to the UAW's attention in June 1995, a full year into the contract term. It is virtually impossible for such a

3. *The Company's Position.* Textron's position on the question decided below and presented here is, as we understand it, that the National Labor Relations Act, *not* the § 301 common law of contracts, governs all issues relating to the process by which collective bargaining agreements are reached. And, for that reason, according to the Company, court jurisdiction under § 301 is limited to enforcing collective bargaining agreements where a breach has been alleged and reaches contract formation issues only as "defenses arising under the NLRA," Pet. Br. at 19, where deciding issues otherwise within the Labor Board's primary jurisdiction is necessary to determine a breach of contract case, Pet. Br. at 19 ("the Taft-Hartley Act continued generally the exclusive jurisdiction of the Board over the collective bargaining process and gave the courts jurisdiction to enforce the agreements").

As the cases cited above illustrate, however, the federal common law of collective bargaining agreements has been widely understood as a *full* body of contract law encompassing *all* traditional contract law issues, many of which are in no way addressed by the provisions of the NLRA governing the bargaining process. 29 U.S.C.

---

claim to be brought to this Court within the three year term typical of collective bargaining agreements.

At the same time, the large number of collective bargaining agreements negotiated in three year cycles by the UAW makes it virtually certain that the question of whether the Union can secure a judicial declaration of its contract right to void an agreement for fraud in the inducement will arise again. *See Honig v. Doe*, 484 U.S. 305, 318-319 n.6 (1988); *Burlington Northern R. Co. v. Maintenance of Way Employees*, 481 U.S. 429, 436 n.4 (1987).

Finally, as noted above, p. 10 n.4, *supra*, even if the declaratory judgment claim presented by the complaint is moot, the wholly separate damage claim is not moot and has not been addressed by the court below. Therefore, even if the Court were to dismiss the writ as improvidently granted, the proper course would be to remand this case to the court of appeals as decide whether there is § 301 jurisdiction to award damages on a quasi-contractual claim for fraud in the inducement.

§§ 158(a)(5), (b)(3) & (d).[6] Equally to the point, § 301 covers any employment-related agreement between an employer and a union, whether or not formation of the agreement is covered by the NLRA duty to bargain collectively, *Retail Clerks v. Lion Dry Goods*, 369 U.S. 17, 25-28 (1962) (agreement between employer and union representing some, but not a majority, of the employer's workers); *Chemical Workers v. Pittsburgh Plate Glass*, 404 U.S. 157, 180 n.20 (1971) (agreement covering retired workers), as well as agreements between labor organizations, *Woddell v. International Brotherhood of Electrical Workers*, 502 U.S. 93 (1991). And, such agreements are *never* within the NLRA duty to bargain collectively.[7]

[6] Section 8(a)(5) makes it an unfair labor practice for an employer "to refuse to bargain collectively with the representatives of his employees, subject to the provisions of section 159(a) of this title," 29 U.S.C. § 158(a)(5); § 8(b)(3) provides that it is an unfair labor practice for a labor organization "to refuse to bargain collectively with an employer, provided it is the representative of his employees subject to the provisions of section 159(a) of this title," 29 U.S.C. § 158(b)(3); § 8(d) defines the duty to bargain collectively as "the performance of the mutual obligation of the employer and the representative of the employees to meet at reasonable times and confer in good faith with respect to wages, hours, and other terms and conditions of employment . . . and the execution of a written contract incorporating any agreement reached," 29 U.S.C. § 158(d).

The Board is occasionally called upon to interpret collective bargaining agreements, especially in cases involving alleged refusals to bargain. *See NLRB v. C&C Plywood Corp.*, 385 U.S. 421 (1967). In such cases, however, the Board does "not construe[] a labor agreement to determine the extent of the contractual rights," but "merely [to] enforce a statutory right which Congress considered necessary to allow labor and management to get on with process of reaching fair terms and conditions of employment . . . ." *Id.* at 428.

[7] Nothing demonstrates the limited authority of the NLRB in this area so well as the fact that, while, for purposes of defending this lawsuit, Textron insists the UAW's fraud-in-the-inducement claim can be presented to *only* the NLRB, the Company has argued to the Labor Board that the alleged fraud is *not* subject to regulation by the NLRB because it concerns a nonmandatory subject of bargaining. Pet. Br. 34 & n.22.

In short, the notion that the language of § 301 reflects a neat division of responsibility for contract-related questions between the NLRB and the courts will not bear the briefest scrutiny. Rather, inquiry into the scope of jurisdiction under § 301 must begin with the general principle that has been the underpinning of § 301 jurisprudence from *Lincoln Mills* forward—that § 301 provides for creation of a comprehensive federal common law of contracts enforceable in the federal courts, not for a truncated common law that requires federal courts to interpret and enforce the terms of collective bargaining agreements without any regard for their validity.

That being so, it ineluctably follows that as *a general matter* district courts have jurisdiction by reason of § 301 and the Declaratory Judgment Act, 28 U.S.C. § 2201, to declare whether collective bargaining agreements are void or voidable at the instance of either party to the agreement. And, after elaborating on that point, we conclude by considering whether there is anything about the particular voidability claim here that displaces the usual jurisdiction of the courts under § 301 in favor of exclusive NLRB jurisdiction.

4. *This Court's Interpretation of LMRA § 301.* Textron's argument rests on a simple minded approach to the interpretation of LMRA § 301. Starting from the premise that the statutory "language is simple and straightforward: . . . authoriz[ing] the federal courts to hear '[s]uits for violation of contracts between an employer and a labor organization,'" the Company infers that § 301 "does not confer jurisdiction over suits that do not allege violation of a collective bargaining agreement . . . ." Pet. Br. 8. Following this Boolean logic to its end, Textron reaches the conclusion that "[s]ince the union does not allege the violation of the agreement here,

Section 301(a) is plainly inapplicable." *Id.* *See also id.* at 20-22.

The first flaw in Textron's argument is that this Court has not treated the language of LMRA § 301 as "simple and straightforward." To the contrary, since its decision in *Textile Workers v. Lincoln Mills, supra*, the Court has "understood § 301 as a congressional mandate to the federal courts to fashion a body of federal common law to be used to address disputes arising out of labor contracts." *Allis Chalmers v. Lueck*, 471 U.S. 202, 209 (1985).

As Justice Frankfurter noted, in an opinion relied upon in Textron's certiorari petition, Pet. 8, "If the section is given the meaning its language spontaneously yields, it would seem clear that all it does is to give procedural directions to the federal courts." *Association of Westinghouse Employees v. Westinghouse Electric Corp.*, 348 U.S. 437, 443 (1955) (plurality opinion). *See* Pet. Br. 15-16 (suggesting that § 301 is a mere procedural device). However, as Justice Frankfurter recognized quite clearly in his dissenting opinion in *Lincoln Mills*, 353 U.S. at 461-462, the Court ultimately rejected that reading of § 301. *See Smith v. Evening News Ass'n*, 371 U.S. 195, 199 (1962) (discussing *Lincoln Mills'* rejection of the *Westinghouse* plurality's view).

In so doing, the *Lincoln Mills* Court adopted the view "that § 301(a) is more than jurisdictional—that it authorizes federal courts to fashion a body of federal law for the enforcement of these collective bargaining agreements. . . ." 353 U.S. at 450-51 (footnote omitted). Accordingly, the Court "conclude[d] that the substantive law to apply in suits under § 301(a) is federal law, which the courts must fashion from the policy of our national labor laws." *Id.* at 456.

In *Teamsters Local v. Lucas Flour Co.*, 369 U.S. 95, 103 (1962), the Court emphasized that "[c]omprehensiveness is inherent in the process by which the law is to be formulated under the mandate of *Lincoln Mills*, requiring

issues raised in suits of a kind covered by § 301 to be decided according to the precepts of federal labor policy." While holding that "incompatible doctrines of local law must give way to principles of federal labor law," *id.* at 102, the *Lucas Flour* Court made clear that in "fashion-[ing], from the policy of our national labor laws, a body of federal law for the enforcement of collective bargaining agreements," *id.* at 103, the federal courts should remain attentive to "accepted principles of traditional contract law," *id.* at 105.

As understood since *Lincoln Mills*, then, § 301 reflects a "congressional policy of having the administration of collective bargaining contracts accomplished under a uniform body of federal substantive law." *Smith v. Evening News Ass'n*, 371 U.S. at 20. This "polic[y] require[s] that 'the relationships created by [a collective bargaining] agreement' be defined by application of 'an evolving federal common law grounded in national labor policy.'" *Allis-Chalmers v. Lueck*, 471 U.S. at 210-211, quoting *Bowen v. United States Postal Service*, 459 U.S. 212, 224-225 (1983). Consequently, "§ 301 is not to be given a narrow reading." *Smith v. Evening News*, 371 U.S. at 199. And, the Court has held that "the pre-emptive effect of § 301 must extend beyond suits alleging contract violations." *Allis-Chalmers v. Lueck*, 471 U.S. at 210. There is no reason to believe that the state law that is thus displaced, which would otherwise define "the relationships created by [a collective bargaining] agreement," is not replaced by federal law under § 301 and every reason to believe that it is.[8]

---

[8] The Ninth Circuit's holding that *state law* claims for fraud in the inducement are not preempted by § 301, *Operating Engineers Pension Trust v. Wilson*, 915 F.2d 535, 538-539 (9th Cir. 1990), *cert. denied*, 505 U.S. 535 (1991), is contrary to the decisions of this Court, discussed in text, which hold that *"only* the *federal* law fashioned by the courts under § 301 governs the *interpretation and*

5. *Labor Contract Declaratory Judgment Suits.* (a) The § 301 Congress contemplated federal court jurisdiction over labor contract declaratory judgment suits. Representative Hartley, the sponsor of the 1947 House bill that contained "the substantial equivalent of the present § 301," *Lincoln Mills*, 353 U.S. at 455, made that plain in embracing the following description of that provision as "absolutely correct," *id.* at 456:

> [T]he section dealing with equal responsibility under collective bargaining contracts in . . . proceedings in district courts contemplates not only the ordinary lawsuits for damages but also such other remedial proceedings, both legal and equitable, as might be appropriate in the circumstances; in other words, proceedings could, for example, be brought by the employers, the labor organizations, or interested individual employees under the Declaratory Judgment Act in order to secure declarations from the Court of legal rights under the contract. [*Id.*]

Given this clear statement of Congressional intent, it requires no great feat of "judicial inventiveness," *Lincoln Mills*, 353 U.S. at 457, to conclude that a "suit . . . for declaratory judgment as to contract obligations arises under § 301," *Franchise Tax Board v. Construction Laborers Vacation Trust*, 463 U.S. 1, 25 (1983), describing *Black-Clawson Co. v. Machinists Lodge 335*, 313 F.2d 179, 181-182 (2d Cir. 1962)[9]

---

application of collective-bargaining agreements." *Steelworkers v. Rawson*, 495 U.S. 362, 368 (1990) (emphasis supplied; citations omitted). Consequently, "though state courts have concurrent jurisdiction over *controversies involving collective-bargaining agreements*, state courts must apply *federal* law in deciding those claims. . . ." *Id.* (emphasis supplied).

[9] In addition to the Third Circuit, the First, Second, Fifth, Seventh, and Tenth Circuits have all held that an employer or a union may, without alleging a contract breach, seek a declaratory judgment regarding thier legal obligations under the contract. *Tejidos de Coamo v. ILGWU*, 22 F.2d 8 (1st Cir. 1994) (considering suit by employer seeking a declaratory judgment that it did not have to arbitrate certain grievances which allegedly arose after the expiration of the contract); *Black-Clawson Co. v. Int'l Ass'n of Machinists Lodge 355, supra, El Paso Bldg. & Constr. Trades Council v. El Paso Chapter Assoc. Gen. Contractors*, 376 F.2d 797 (5th Cir. 1967); *International Bhd. of Electrical Workers v. Signcraft, Inc.*, 864 F.2d 499, 502 (7th Cir. 1988); *McNally Pittsburgh Inc. v. International Ass'n of Iron Workers*, 812 F.2d 615, 619 (10th Cir. 1987). *See also Rozay's Transfer v. Local Freight Drivers, Local 208*, 850 F.2d 1326 (9th Cir. 1988), *cert. denied*, 490 U.S. 1030 (1989) (a party may sue for fraud in the inducement without alleging a breach of contract). Thus, Textron could not be more wrong in asserting that "the majority of courts to have considered the issue have concluded that Section 301 is limited to suits for violation of collective bargaining agreements." Pet. Br. 23.

Indeed, such a conclusion would seem to follow from this Court's observations that § 301 reflects "a strong presumption that favors access to a neutral forum for the peaceful resolution of disputes," *Groves v. Ring Screw Works*, 498 U.S. 168, 173 (1990), and a Congressional determination "to leave the enforcement of collective bargaining agreements 'to the usual processes of the law.'" *Dowd Box Co. v. Courtney*, 368 U.S. at 513. For "[d]eclaratory judgment play an important . . . role in the resolution of disputes arising out of contracts." *Restatement (Second) of Contracts* p. 107, as we now show.

(b) The federal Declaratory Judgment Act provides:

> In a case of actual controversy within its jurisdiction . . . any Court of the United States, upon the filing of an appropriate pleading, may declare the rights and other legal relations of any intrested party seeking such declaration, whether or not further relief is or could be sought. [28 U.S.C. § 2201(a)]

By its "nature . . . the declaratory remedy . . . was designed to permit adjudication of either party's claims." *Franchise Tax Board v. Construction Laborers Vacation Trust*, 463 U.S. at 28 n. 19, quoting Borchard, *Declaratory Judgments* 298-300 (1934). Thus, declaratory relief permits a "plaintiff . . . to ward off possible action

of the petitioners by seeking a declaratory judgment to the effect that he will have a good defense when and if that cause of action is asserted." *Public Service Commission v. Wycoff*, 344 U.S. 237, 248 (1952). In so doing, the Act "permits actual controversies to be settled before they ripen into violations of law or a breach of contractual duty," thereby "minimiz[ing] the danger of avoidable loss and the unnecessary accrual of damages." 10A Wright, Miller & Kane, *Federal Practice and Procedure*, § 2751, at 569-71 (2d ed. 1983).

The Declaratory Judgment Act, to be sure, "includes certain limitations on the jurisdiction of federal district courts to entertain declaratory judgment suits." *Franchise Tax Board*, 463 U.S. at 18: The Act does not permit a defendant fundamentally to recast a lawsuit by bringing in federal court an anticipatory action where any damages or other enforcement action would go forward in state court or before an administrative agency. *Id.* at 16-19; *Skelly Oil Co. v. Phillips Petroleum*, 339 U.S. 667, 673-674 (1950); *Public Utilities Commission v. Wycoff*, 344 U.S. at 246-247.

Consequently, as a general matter, "[w]here the complaint in an action for declaratory judgment seeks in essence to assert a defense" to a feared enforcement suit, "the character of the threatened action . . . determine[s] whether there is federal-question jurisdiction in the District Court." *Public Service Commission v. Wycoff*, 344 U.S. at 248. Applying this principle, "[f]ederal courts have regularly taken original jurisisdiction over declaratory judgment suits in which, if the declaratory judgment defendant brought a coercive action to enforce its rights, that suit would necessarily present a federal question" cognizable in federal court. *Franchise Tax Board*, 463 U.S. at 19. That is undoubtedly true here.

Had the UAW in fact announced its intention to strike over the subcontracting dispute that is at the core of this lawsuit, a suit by Textron to enforce the no-strike clause

could have been brought in federal court under § 301 and would have been governed as a substantive matter by the § 301 federal common law of contracts.[10] Equally to the point, in such an action the UAW's defense—that the no-strike clause was voidable along with the rest of the agreement because of Textron's fraud in the inducement in the negotiations that led to the agreement—would itself be governed by the § 301 federal common law contract principles governing recission for fraudulent inducement. *See* pp. 27-28, *infra*, concerning the substantive development of the federal common law of fraudulent inducement.

In other words, an enforcement case by Textron could raise exactly the same legal issues involved in this case, and those issues are § 301 federal labor contract common law issues committed to the federal courts, and not state law issues committed exclusively to state courts, or pure NLRA issues committed exclusively to the NLRB, for determination. Permitting the present suit for declaratory relief to go forward, then, would in no way foster a end-run around the law or the forum in which any enforcement action would go forward, but would simply allow the same issues to be decided between the same parties in the same forum that would determine a § 301 contract enforcement suit based on precisely the same facts and legal contentions.

Further, in the present context, the Declaratory Judgment Act's purpose to "permit actual controversies to be settled before they ripen into violations of law or a breach

---

[10] The Union would most likely not be able to contend that Textron is required to take such a claim to arbitration, because the contractual grievance procedure does not appear to be open to employer-initiated grievances. *Compare* Jt. App. 7 *with Avco Corp. v. Local Union 787, UAW*, 459 F.2d 968, 970 (3d Cir. 1972). In any event, the question whether an issue arising under the federal common law of contracts should be decided in the first instance by an arbitrator or by the courts is not a jurisdictional issue but a merits question, decided by a court determination of the intentions of the parties to the collective bargaining agreement.

of contractual duty," 10A *Federal Practice and Procedure*, § 2751, at 569-71 (2d ed. 1983), is of particular importance. Once the UAW concluded that the agreement had been fraudulently induced and was void, an alternative course of action the Union could have taken would have been to take the position that the entire agreement was void and to strike to obtain a more favorable subcontracting clause. That course of action would undoubtedly have injured Textron's business and led to a damages claim against the Union. Requiring the UAW to strike, causing possible injury to both itself and the employer, in order to obtain a judicial determination of its right under the § 301 federal common law of labor contracts to void an agreement that is the product of fraud in the inducement is entirely inconsistent with the goal of the Declaratory Judgment Act to "minimize the danger of avoidable loss and the unnecessary accrual of damages." *Id.* And mandating such a course of action as a prerequisite to federal court jurisdiction is inconsistent as well with this Court's pronouncement that "under § 301 . . . there is a strong presumption that favors access to a neutral forum for the peaceful resolution of disputes." *Groves v. Ring Screw Works, supra*, 498 U.S. at 173.

(c) Textron's brief bypasses the Declaratory Judgment Act, through the device of suggesting that § 301 was cast at it was precisely to manifest a Congressional intention to preclude declaratory relief that would otherwise be available in a suit to determine purely federal issues ordinarily committed to the federal courts for decision. Pet. Br. 31-32.

But the legislative history of the LMRA § 301 is squarely to the contrary, and shows that Congress had no such odd intent but rather a far more rational—and definite—intent to permit the Declaratory Judgment Act its usual role. *See*, p. 18, *supra*. Indeed, as we have noted, that history was specifically relied upon in *Lincoln Mills* as indicating that Congress intended in § 301 to provide for substantive as well as procedural law governing collective bargaining agreements. *See* 353 U.S. at 456.

As a secondary point, Textron invokes *Skelly Oil* for the proposition that "the declaratory judgment remedy does not . . . expand the subject matter jurisdiction of the federal courts." Pet. Br. at 32. That proposition avails Textron nothing here. The *Skelly Oil* Court stated, "When concerned as we are with the power of the inferior federal courts to entertain litigation within the restricted area to which the Constitution and Acts of Congress confine them, 'jurisdiction' means *the kinds of issues which give right of entrance to federal courts.*" 339 U.S. at 666. (emphasis supplied)

In this case, *all* the legal issues concern the "limited subject matters which . . . Congress . . . authorized the District Courts to adjudicate," *id.*, namely, issues arising under the § 301 federal common law governing labor agreements.[11] And, of course, the Declaratory Judgment Act *does* permit the adjudication of disputes otherwise properly in federal court, as defined by the issues and the parties, anticipatorily, as long as there is a case or controversy sufficient to meet Article III standards. Thus, where, as here, *all* the legal issues concern matters the federal courts are authorized to adjudicate, and the dispute is between the very same parties who could adjudicate the same federal issues in federal court in an enforcement action, the Declaratory Judgment Act provides a proper basis for the action. Nothing in *Skelly Oil* is to the contrary.

Our analysis and conclusion is foreshadowed by the Court's *Franchise Tax Board* decision. There the Court held improper a declaratory judgment action by a state under ERISA, 29 U.S.C. § 1132(a), as to whether a state tax collection action could go forward, because ERISA "neither creates nor expressly denies any cause of action in favor of state governments, to enforce tax levies or for any other purpose," and "does not purport to reach every question relating to plans covered by ERISA." *Id.* at 25.

---

[11] Indeed, there may well be jurisdiction over this case under 28 U.S.C. § 1331 as well as under § 301, since the case "arises under" the federal common law of contract.

At the same time, the Court made clear that LMRA § 301 is quite different in its reach, and that, because § 301 *does* supply sufficiently comprehensive federal law to cover any suit concerning contractual obligations under a collective bargaining agreement, there is no basis for precluding declaratory relief in a suit between the very same parties who would litigate an enforcement action. *Id.*, at 25 n. 28 (contrasting § 301(a) with ERISA § 502(a) because § 301(a) applies to *all* "[s]uits for violation of contracts between an employer and a labor organization representing employees in an industry affecting commerce," without regard to the identity of the parties to the suit or to the nature of the contract covered, and noting in particular with approval *Black Clawson Co. v. Machinists Lodge 335*, 313 F.2d at 181-82 as holding that "declaratory judgment as to contract obligations arise under § 301.")[12]

6. *Garmon Pre-Emption and § 301 Suits.* As we noted at the outset, Textron places heavy reliance on the argument that the UAW's declaratory judgment action is barred by the *Garmon* preemption doctrine, which holds that "[w]hen an activity is arguably subject to § 7 or § 8

[12] In *Black Clawson*, an employer invoked jurisdiction under § 301 to obtain a declaration that a particular grievance was *not* subject to the arbitration provision of the collective bargaining agreement. As pleaded, the action did not allege that any violation of the agreement had occurred, but sought only to establish that *if* the employer refused to arbitrate it would not violate the agreement. *Black Clawson* upholds jurisdiction, noting that "[t]he issues of fact and law to be determined by the court are the same whether the complaint alleges a violation of the contract and requests arbitration or whether it alleges compliance with the agreement and requests protection by declaratory judgment against improper demands for arbitration." 313 F.2d at 181. And, the court of appeals added, "To hold that controversy cannot be resolved in an action brought by any of the parties empowered to do so under § 301(a) would comport neither with the streamlined procedural policy in the declaratory judgment proceeding nor with the strong concern embodied in § 301 with . . . peaceful resolution of contract disputes between labor and management." *Id.*, at 182.

of the [National Labor Relations] Act, the States as well as the federal courts must defer to the exclusive competence of the National Labor Relations Board. . . ." *San Diego Building Trades Council v. Garmon*, 359 U.S. 236, 245 (1959). Since fraud in collective bargaining is at least arguably a violation of the Act's prohibition of bad faith bargaining, Textron argues that the Union's claim that the agreement is voidable as a result of fraud in the inducement is within the NLRB's primary jurisdiction. Pet. Br. 11-15.

Of course, nothing is better settled than that *Garmon*'s basic rule does *not* control in the LMRA § 301 context. This Court has "refused to apply the pre-emption doctrine of the *Garmon* case" to suits brought under § 301, even "where the alleged conduct of the employer, not only arguably, but concededly, is an unfair labor practice within the jurisdiction of the National Labor Relations Board." *Smith v. Evening News, supra*, 371 U.S. at 197. The Court has explained this exception to *Garmon* as follows:

> The strong policy favoring judicial enforcement of collective-bargaining contracts was sufficiently powerful to sustain the jurisdiction of the district courts over enforcement suits even though the conduct involved was arguably or would amount to an unfair labor practice within the jurisdiction of the National Labor Relations Board. [*Groves v. Ring Screw Works*, 498 U.S. at 173, quoting *Hines v. Anchor Motor Freight*, 424 U.S. 554, 561-62 (1974).]

See also Connell Co. v. Plumbers & Steamfitters, 421 616, 626 (1975) (citing *Smith* for the proposition that "federal courts may decide labor law questions that emerge as collateral issues in suits brought under independent federal remedies").[13]

[13] We note that Textron's suggestion throughout its brief that the availability of NLRA unfair labor practice jurisdiction is an effective substitute for declaratory judgment relief under the § 301 federal common law of contracts and explains Congress' supposed

At the same time, the *Garmon* rule does not lose all its force even in areas within the federal courts' § 301 jurisdiction. The Court has held that the *Smith/Connell* exception to *Garmon* does not allow a party to "circumvent the primary jurisdiction of the NLRB simply by casting statutory claims as violations of the union's duty of fair representation." *Communications Workers v. Beck*, 487 U.S. 735, 743 (1988). By the same token, a party may not circumvent the primary jurisdiction of the NLRB by casting unfair labor practice allegations as contract claims. Applying this principle, the Third Circuit in *Beverly Enterprises v. District 1199C*, 90 F.3d 93 (3d Cir. 1996), dismissed an employer brought suit "for a declaration that the union security clause in its collective bargaining agreement violates Section 8(a)(3) of the National Labor Relations Act," on the grounds that "the claim that the unions have violated Section 8(a)(3) falls squarely within the the primary jurisdiction of the Board." *Id.* at 94 & 95. *See* Pet. App. 9a n. 2. *See also Amalgamated Ass'n of Street, Electric Railway & Motor Coach Employees v. Lockridge*, 403 U.S. 274, 292-293 (1971) (lawsuit based on dismissal from employment under union security clause "represents one of the clearest instances where the *Garmon* principle, properly understood, should operate").

---

decision to preclude such relief simply will not wash. Cases such as *Paperworkers v. Misco, supra*, for example, involving the contention that a provision of a collective bargaining agreement is void for violation of a public policy unrelated to the NLRA could not be brought to the Labor Board for resolution. Similarly, the Labor Board has no jurisdiction to determine validity questions with regard to contracts or contractual provisions that are within the reach of § 301 but involve a nonmandatory subject of bargaining; a contract between an employer and a union that is not a majority representative; or a contract between two labor organizations. *See Pipefitters, supra; Lion Dry Goods, supra; Wooddell, supra.* Nor can one party to a collective bargaining agreement invoke Labor Board jurisdiction to determine whether an agreement has expired and is no longer binding, or whether there was a mutual, good faith mistake precluding a meeting of the minds, or whether a putative agreement is too vague to be enforceable.

The instant case is well within *Smith v. Evening News'* ambit, however, and well outside its *Beck/Beverly/Lockridge* exception. The UAW's declaratory judgment claim does *not* rest on the unfair labor practice provisions of the NLRA. Rather, the Union's claim rests squarely on the *traditional well established common law of contracts rule* that, where "a party's manifestation of assent is induced by either a fraudulent or a material misrepresentation by the other party upon which the recipient is justified in relying, the contract is voidable by the recipient." *Restatement (Second) of Contracts* § 164(1). *See also Corbin on Contracts* §§ 6, 146 & 228.

7. *NLRB Regulation of the Bargaining Process.* So that we do not fall into overstatement we conclude with two cautions.

First, while the § 301 federal common law of labor contracts to be developed and applied by the federal courts includes a fraud in the inducement doctrine, that does not mean that, in exercising their jurisdiction under § 301, the courts should be inattentive to the NLRB's regulation of the bargaining process. To the contrary, the "congressional policy [is to] hav[e] administration of collective bargaining contracts accomplished under a uniform body of federal substantive law." *Smith v. Evening News*, 371 U.S. at 200. And, this requires that "the substantive law to apply in suits under § 301(a) . . . must [be] fashion[ed] from the policy of our national labor laws," *Lincoln Mills*, 353 U.S. at 456, with due regard, where appropriate, to the NLRB's articulation of that policy.

At a minimum, then, the courts in exercising jurisdiction under § 301 must take account of the NLRA rules governing the bargaining process in ruling on the merits of contract claims within the courts' jurisdiction. *See Oubre v. Entergy Operations, Inc.*, Sup. Ct. No. 96-1291 (Jan. 26, 1998). Thus, for instance, in defining what sort of conduct will be grounds for affording one party the

option of voiding the agreement, a court should be guided by any NLRB decisions bearing on the conduct in issue. It is very much to the point in this regard that Textron has not even suggested that its alleged fraud is privileged by any decision of the NLRB defining what it means to bargain in good faith. To the contrary, Textron has argued to the NLRB that its alleged fraud is *not* subject to Labor Board regulation at all, on the theory that the Company had no statutory duty to bargain at all with respect to the subject matter of the misrepresentation. Pet. Br. 34 & n. 22.

Second, while *Garmon* preemption principles do not apply, a Federal court does have *discretion* to decline to consider a declaratory judgment claim that rests primarily on alleged unfair labor practices rather than on traditional contract principles. The Declaratory Judgment Act "confer[s] on federal courts unique and substantial discretion in deciding whether to declare the rights of litigants." *Wilton v. Seven Falls Co.*, 515 U.S. 277, 286 (1995). And, the availability of special administrative enforcement procedures is an appropriate ground for declining to entertain a claim for declaratory relief. *See Katzenbach v. McClung*, 379 U.S. 294, 296 (1964).[14]

Of course, the district court in this case did *not* exercise such discretion, but rather dismissed the UAW's complaint for lack of subject matter jurisdiction. Pet. App. 18a. In any event, this would not appear to be an appropriate

[14] In contrast, Federal courts do not have discretion to refuse to consider an unfair labor practice issue asserted as a defense to an action to enforce a labor contract. *Kaiser Steel Corp. v. Mullins*, 455 U.S. 72, 83-85 (1982). The reason for this is that "[t]he power of the federal courts to enforce the terms of private agreements is at all times exercised subject to the restrictions and limitations of the public policy of the United States as manifested in . . . federal statutes," and "[w]here the enforcement of private agreements would be violative of that policy, it is the obligation of courts to refrain from such exertions of judicial power." *Id.* at 84, quoting *Hurd v. Hodge*, 334 U.S. 24, 34-35 (1948).

case for the district court to exercise its discretion to decline jurisdiction in favor of the NLRB. The Union's claim for declaratory relief rests squarely on a common law contract doctrine and does not invoke the NLRA's unfair labor practice provisions. Moreover, just as in *Smith v. Evening News*, 371 U.S. at 198 n. 6, "[t]he view of the National Labor Relations Board . . . is that ousting the courts of jurisdiction under § 301 in this case would not only fail to promote, but would actually obstruct, the purposes of the Labor Management Relations Act." *See* Brief for the United States, as *amicus curiae*.

CONCLUSION

The decision of the court of appeals should be affirmed.

Respectfully submitted,

MARSHA S. BERZON
177 Post Street
San Francisco, CA 94104

JAMES B. COPPESS
815 16th Street, N.W.
Washington, D.C. 20006

LAURENCE GOLD
1000 Connecticut Ave., N.W.
Washington, D.C. 20036

DANIEL W. SHERRICK
(Counsel of Record)
8000 East Jefferson Ave.
Detroit, MI 48214
(313) 926-5216

STEPHEN A. YOKICH
1757 "N" Street, N.W.
Washington, D.C. 20036